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Chair

Mrs. Bernadette Jordan

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● (0845)

[*English*]

The Chair (Mrs. Bernadette Jordan (South Shore—St. Margarets, Lib.)): Good morning, everyone, and welcome to the Standing Committee on Fisheries and Oceans, meeting number 98. Pursuant to the order of reference on Monday, April 16, 2018, we are doing a review of Bill C-68, an act to amend the Fisheries Act and other acts in consequence.

Before we get to our witnesses, I would just like to tell committee members that we have to do a little bit of committee business to approve budgets for the fall, and I'm wondering if we can take five minutes off of each hour and do 10 minutes at the end of this session.

Do I have consent?

Some hon. members: Agreed.

Mr. Todd Doherty (Cariboo—Prince George, CPC): Madam Chair, we are, by our count, I think, on meeting three on C-68, and we have yet to see the complete witness list. We're wondering if it is possible to give that out to the parties.

The Chair: Yes, Mr. Doherty, we will have that circulated.

Mr. Todd Doherty: Thank you.

Mr. Fin Donnelly (Port Moody—Coquitlam, NDP): Just on that note with the master list, we all, I believe, submitted our lists in priority, and I've been looking at some of ours, and I'm not sure how the witnesses have been called. Certainly when we look at the ones we've had come to committee, it doesn't seem to be in the priority we submitted. If there's some rationale on the master list, it would be helpful to figure out how they get chosen.

The Chair: We can address that when we go into committee business.

Mr. Fin Donnelly: Thank you.

The Chair: Thank you.

We'll get started today with our witnesses. In the first hour we have, from Fish, Food and Allied Workers, Keith Sullivan, president, by video conference.

We also have, from the Mining Association of Canada, Pierre Gratton, president and chief executive officer, and Justyna Laurie-Lean, vice-president of environmental and regulatory affairs.

We also have, from Oceana Canada, Joshua Laughren, executive director.

We're going to start this morning with Mr. Sullivan for 10 minutes, please.

Mr. Keith Sullivan (President, Fish, Food and Allied Workers): Thanks, everybody. Thank you to the committee for allowing me to speak today. I'm not sure if I was the number one pick by Mr. Donnelly, but anyway we're going to get going. I hope everyone will appreciate the comments. I would have loved to be there today in person certainly.

My name is Keith Sullivan, and I'm the president of the Fish, Food and Allied Workers Union. We represent workers in more than 500 communities in the province of Newfoundland and Labrador, and most of those people work in the fisheries. About 10,000 of those are actually harvesters.

Many of the communities actually existed for centuries. The whole reason people live in these communities in these places in Newfoundland and Labrador is the fishery. I grew up in the small fishing community of Calvert. There were six generations of harvesters in that area before me, and that's not unlike an awful lot of stories of our members as well. I was lucky enough to be working in a fishing boat for many years of my life as well.

The inshore fishery has been the primary economic driver of coastal communities in Newfoundland and Labrador. It's the real backbone of the middle class in those rural communities. Without the inshore fishery, the rural communities in Newfoundland and Labrador wouldn't actually survive.

Our industry has gone through a significant transformation over the last number of years, particularly the last 20 years. Our ability to adjust, transform, and reinvent ourselves has been an amazing show of resilience and innovation in the inshore fishery. Now we're going through another transition and we're seeing a dramatic impact on our fishery once again. We're seeing warming water temperatures that have resulted in generally a decline of shellfish stocks, very valuable shellfish stocks, and we're seeing a resurgence in many groundfish species. While we see that there are new opportunities on the horizon, in the short term our members, whether they're in harvesting or in fish processing, are going to face significant challenges.

In order to rebuild a groundfish fishery in Newfoundland and Labrador and sustain those coastal communities, we have to have management that's based on the principles of ecological sustainability, of course, and social sustainability, but also economic sustainability is important as well.

The recently tabled amendments to the Fisheries Act provide much of that critical foundation required to achieve those objectives. Most of my comments today are going to focus on the fisheries management provisions in Bill C-68, specifically the preservation and promotion of the independent, owner-operator fishery.

In our province it is not an exaggeration to say that the owner-operator principle and fleet separation are the two most important economic development principles we have in our coastal communities, particularly rural Newfoundland and Labrador. These two policies have kept a viable inshore fleet in place and have injected significant wealth to all areas of the province. Again, I don't think it's an exaggeration to say those two policies combined are the most important economic development tools that our province has to offer, and I would say it would be similar in many areas of rural Atlantic Canada. It's because of the critical role that owner-operator and fleet separation play that the FFAW has been lobbying for 20 years to make sure that these policies are enshrined in law.

While inshore fish harvesters, their families, and their communities recognize the importance of these policies, there are some who do not see the value of safeguarding the independent owner-operator fishery. In the past, we've seen that corporate interests have influenced and interfered with the application and enforcement of the fleet separation and owner-operator policies. As a result, corporations have gained control of licences and are siphoning the wealth and the benefits not only from fisheries and fishery participants but really from our coastal communities and entire regions of our province.

● (0850)

The attack on the owner-operator principle, led primarily by large fish-processing companies, over the past 20 years has had serious economic repercussions for the fishery and our coastal regions. Of particular concern is the impact that trust agreements have had on the cost of fishing licences, which has made it extremely difficult for young people to enter the fishery. This is becoming more and more prevalent, and is really a key consideration for the next generation of harvesters. It's also important to note that harvesters who are actually in these trust agreements receive less for their catch. The same competition doesn't exist for these harvesters, so they're paid lower wages, in many instances.

The fleet separation and owner-operator policies have been remarkably easy to circumvent in recent years. They're extremely valuable, but at the same time they've been easy to get around. Legal teams for companies have developed trust or controlling agreements where the licence-holder must transfer the beneficial interest of a licence to another party that's not legally entitled to hold one—namely, most times a fish-processing company or a larger corporation. In such transactions, control over how the licence is used, sold, or managed is really granted to this third party as well. Again, for the licence-holder whose licence is owned or held in name only, the total control over that and the benefits are going to these outside corporations. That can be someone from outside of Canada, for that matter, just because we don't have the enforcement to back things up. Really, this is why the enforcement powers are so critical to ensuring that the owner-operator fleet is protected.

The independent owner-operator fishery is a strategic asset to Canada's economy. Amendments to section 43 of the act that give the minister authority to make regulations to enforce the owner-operator and fleet separation are key. With the force of law, these policies will become more robust, with legal consequences for corporations holding fish harvesters in controlling agreements.

Just the policy alone, as we saw, is insufficient to safeguard the social, economic, and cultural future of coastal communities. These policies deserve to be in legislation, and are the pillars, as I said before, of economic development for hundreds of thousands of people and their communities in Atlantic Canada. Over the years, there have been many discussions with the Department of Fisheries and Oceans on how to better enforce these policies, but little progress has been made. The policy for preserving the independence of the inshore fleet in Canada's Atlantic fisheries—PIIFCAF, as many in the business would know it—is an important policy initiative that's been in place for almost a decade but that's had modest results. It's an important and well-intentioned policy, but again, they've had the ability to circumvent that policy without the force of law.

In the end, PIIFCAF and the enforcement of the owner-operator and fleet separation are undermined because the activity they're regulating is not illegal. Owner-operator and fleet separation are not law, and violating them does not result in any specified punishment.

● (0855)

The proposed amendments to section 9 of the act should address the current lack of punishment by clarifying the minister's authority to act when the law is violated. These provisions give new authority to suspend or cancel licences if the minister determines that the licence-holder has entered into an agreement that contravenes any provision of the act or regulations.

Protecting the inshore fishery is one of the best ways to build a strong middle class in hundreds of coastal communities—much like Calvert, the community I grew up in—and to create jobs and protect and strengthen the economy. We actually have a very highly sophisticated, independent owner-operator fleet that is capable of harvesting all species on our coasts. It's able to bring that fresh product to our communities, but we need to make sure we have a strong policy and legal framework to ensure that the benefits of the fishery come back to the people who fish and to the adjacent coastal communities.

We can no longer afford to make fisheries decisions in silos, nor can we afford to ignore the wealth of knowledge offered by people who spend their days and countless hours in fishing boats.

The Chair: Thank you, Mr. Sullivan. I'm sorry, I have to cut you off there. That's your 10 minutes.

Next we'll go to the Mining Association of Canada.

Mr. Gratton, go ahead for your 10 minutes, please.

Mr. Pierre Gratton (President and Chief Executive Officer, Mining Association of Canada): Thank you, members of the committee. On behalf of the Mining Association of Canada, Justyna and I thank you for this opportunity to appear before you today.

As some of you may know, when I spoke to your colleagues on the environment committee about Bill C-69, I said I was mad, mad because in the same bill, the transition provisions for mining projects under CEAA were not the same as those for NEB projects.

In the latter, the government ensured that all projects undergoing an assessment begun by the NEB under CEAA 2012 would remain under the NEB, but not so for mining, which faces the uncertainty of switching acts midstream.

Guess what. I'm mad about Bill C-68 for a very similar reason. In our appearance before this committee on November 14, 2016, we stressed the importance of adequate departmental capacity for implementing the act and managing transition. We described the significant challenges we encountered with the transition resulting from the amendments introduced in 2012. Over and over we emphasized to the department that they had to do a better job of managing the transition this time around.

We appreciated your recommendations, particularly 21, 22, and 25, that advocated for investments in hiring field personnel and meaningfully resourcing the monitoring, compliance, and enforcement components of the department. We are pleased that the government has materially increased funding for DFO.

However, here with Bill C-68, we find once again a failure to address the problem of transition. While the provisions proposed in subclause 53(1) provide an orderly transition for authorization applications that have been deemed complete, they do not recognize directions given to proponents by DFO in response to a request for review or to guide an application for authorization.

What does this mean exactly? I'll explain.

Determining whether a large and complex mining project will impact fish habitat, gathering information on potentially impacted fish habitat, and examining mitigation or avoidance options takes time. Field studies take time, and must account for seasonal constraints. If an authorization under the Fisheries Act is required, additional time is needed to gather all necessary information, assess offset options, seek input from affected communities, particularly indigenous communities, and otherwise conform to the applications for authorization under paragraph 35(2)(b) of the Fisheries Act regulations. The cost of the complete authorization application package can range from hundreds of thousands of dollars for small projects to millions of dollars in the case of large projects, and can take several years.

Thus, requesting a review and preparing an application is not a trivial or a quick undertaking. Mining projects are also subject to federal and provincial environmental assessment processes. These can take three or more years, and application for an authorization under the Fisheries Act cannot be submitted until these assessments are completed. The case of one MAC member is particularly troubling, and exemplifies the importance of our request for amendment.

The project entered federal environment assessment in 2012, and the proponent had to completely revise its original Fisheries Act-related plans when the new Fisheries Act amendments came into force in late 2013. In the case of this project, it is unlikely that the environmental assessment will be completed in time to allow an application for authorization to be submitted before this bill, Bill C-68, and its amendments, come into force. This proponent would then be required to revise its application all over again, because the extensive direction given by departmental officials over the past six years would suddenly be deemed invalid.

I'm sorry, but we find this simply unacceptable. We therefore urge you to amend subclause 53(1) as suggested in our brief to you, to prevent responsible proponents from being forced to redo field studies, project design, offset design, and application development.

I should emphasize we have met with the department on this matter, and we believe we've been heard, but again, we strongly encourage this committee to consider our proposed amendment seriously, because, members of the committee, our sector has practised due diligence. Unlike other sectors that believe their activities were no longer regulated by the Fisheries Act, over the past six years we have fully complied and engaged with departmental officials to understand the requirements of the 2012 amendments to the Fisheries Act.

● (0900)

Indeed, officials, by their own admission, confirm that most authorizations today are for only the mining sector. Few others, removed from the scrutiny of the Canadian Environmental Assessment Act and, thus, removed from the scrutiny of DFO, have bothered to seek authorizations even though their activities can, and do, harm fish.

Yet we find it is the mining sector that, by following the directions received, now may be penalized for our due diligence and engagement with the department if the directions received are invalidated through inadequate transition provisions, and duplication of effort is required to re-engage following the coming into force of new amendments.

The change we are requesting is not wholesale grandfathering. In fact, we believe the number of projects that would be affected by the proposed change is small. Morever, the requested change to the transition provisions would not affect the health of Canada's fish habitat. We do not believe there has been a deterioration in the protection from inadequate stringency of reviews and authorization applications for mining projects—and I believe the department could confirm that, as well. If there has been a deterioration, it is due to the lack of scrutiny of the activities of others. We are asking for relief from unnecessary administrative burdens on responsible project proponents and DFO regional staff.

Let me now turn to a second issue, which relates to cumulative effects.

When addressing the environment committee on Bill C-69, I spoke about how CEAA 2012 has penalized the mining sector by making us responsible for the cumulative effects of others not subject to CEAA. With Bill C-68 we face a similar situation with the requirement in proposed paragraph 34.1(1)(d) that the minister consider cumulative effects before recommending regulations or exercising any power.

Consideration of cumulative effects is necessary in making decisions that may impact aquatic ecosystem health. Fisheries are under federal jurisdiction, and the Fisheries Act contains a comprehensive range of regulatory tools for the discharge of that jurisdiction. DFO, thus, has the tools for monitoring, assessing, and managing cumulative effects.

However, based on our experience with CEAA 2012, the department may default to erroneously and unfairly place the burden of managing cumulative effects on a few mining projects rather than taking the steps necessary to address the root causes of cumulative fish habitat deterioration.

You recently heard from Margot Venton of Ecojustice Canada, who said:

> ...fish habitat is degraded not only by major projects, but also through the impact of smaller-scale works, undertakings, and activities. To stem the tide of incremental loss of habitat, DFO needs to do a better job of considering and addressing this cumulative loss of habitat....

Yes—guess what—I'm agreeing with Ecojustice, and not just with them.

The recently published "Watershed Reports: A national assessment of Canada's freshwater", by the World Wildlife Fund, highlights the complexity and diversity of stresses on Canada's watersheds. It supports our concern that these stresses cannot be addressed by focusing the department's attention on a few mining projects. Activities affecting fish and fish habitat must be fully assessed by the party that caused the effect. Mining projects should be responsible only for project-related effects, as our industry has no control over effects related to non-mining activities, such as forestry, agriculture, hydro, and municipal works. In short, the act must be applied consistently for all works, undertakings, or activities.

Project proponents should not be held accountable for the cumulative effects of non-regulated activities, as contemplated in proposed subsection 34.1(1). As the legislation is drafted, a project proponent could be required to avoid, mitigate, or create offsets for fish habitat to compensate for the harm to fish habitat caused by other industries.

These concerns could be partly addressed by amending proposed paragraph 34.1(1)(d) as spelled out in our brief.

To conclude, if the transition provisions in subclause 53(1) are amended as requested, and if you help balance the responsibility for cumulative effects, the impacts of the revised Fisheries Act proposed by Bill C-68 on the mining sector are expected to be manageable. Of course this is contingent on how these are interpreted and implemented by DFO.

Thank you very much. I look forward to your questions.

● (0905)

The Chair: Thank you very much.

You still had 30 seconds left, so you did very well.

Mr. Laughren, go ahead for 10 minutes, please.

Mr. Joshua Laughren (Executive Director, Oceana Canada): Thank you, Madam Chair and committee members.

Thank you for the opportunity for Oceana to appear today on Bill C-68, and thank you for your continuing good work.

Oceana Canada is collaborating with the other environmental groups that have been in front of you as well. We're regularly consulting with first nations on how to strengthen Bill C-68. We support the priority amendments that you've heard from others on environmental flows and cumulative effects. First nations groups, in particular, have emphasized the importance of developing habitat banking in the act in co-operation with first nations, and of referencing the United Nations Declaration on the Rights of Indigenous Peoples in the act.

Our top priority, as Oceana, and our area of expertise is the rebuilding of fisheries. It's our view that Bill C-68 as worded is missing one really crucial element, and that's a duty to act when stocks, populations are depleted, with an aim to restore the fishery back to healthy levels. Other nations require this, which I'll show. Canada has committed to it in international agreements, and it already exists in departmental policy. We believe that enshrining this duty in law is the single most important thing we can do as a nation to secure the future for our fisheries and all who rely on them.

This is a word on who we are. Oceana Canada was established in 2015 as an independent, science-based organization. It's part of the largest international group focused solely on oceans in eight countries plus the EU. We believe the oceans are essential to helping feed the nine billion people projected to be on earth by 2050. By rebuilding Canada's fisheries, we can strengthen our coastal communities, reap greater economic and nutritional benefits, and protect our future. Oceana Canada wants the same things we think everyone in this room wants: robust, healthy, wild fisheries and all the cultural and economic benefits that come with them.

Turning to Bill C-68, for the first time since the Fisheries Act was created in 1868, Bill C-68 includes provisions specific to rebuilding. That's good. Unfortunately, as currently worded, the provisions fall short of what we know from global experience is necessary to effectively rebuild stocks. It falls short of our international agreements, and it will not keep us commensurate with other nations' laws.

Bill C-68 requires the minister to consider whether there are some unspecified measures to rebuild stocks that, in his or her opinion, are in the critical zone when making management decisions. I want to pause on that for a moment. "Consider" whether or not there is some measure in place only once the stocks are at or below the level the government's own policies and management measures are designed to never let it get to.

I've heard it argued that we shouldn't worry about this, that the regulations will be where this detail will be put in. We agree, of course, that regulations will be necessary, and that's where a lot of the detail can lie. We fundamentally believe the act has to provide clear guidance to those responsible for drafting the regulations and to stakeholders and rights holders on what the intent of those regulations will be. That guidance is currently missing.

What constitutes a measure to rebuild stocks? If there aren't measures to rebuild depleted stocks, what then? Rebuild to what? Is it to maximum sustainable yield or to upper reference points or just rebuild them back to the edge of the critical zone and leave it there? In what time frame? Bill C-68 falls short of the international standards, right at a time, too, when Canada is seeking to play a global leadership role in fisheries and oceans management.

I want to give you some quick examples from other laws around the world, edited for brevity. In the U.S. the law says, "Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry." It goes on to say that any fishery management plan, with respect to any fishery, shall contain measures necessary and appropriate to prevent overfishing and rebuild overfished stocks.

In the European Union it says that the common fisheries policy "shall aim to ensure that the exploitation of...resources restores and maintains populations....above levels which can produce the maximum sustainable yield." It goes on, "Multiannual plans shall be adopted as a priority...and shall contain conservation measures to restore and maintain fish stocks above levels capable of producing maximum sustainable yield".

In New Zealand the law says the minister shall set a total allowable catch that enables the level of any stock whose current level is below maximum sustainable yield to be altered in a way and at a rate that will result in the stock being restored to that level.

In Japan the law says the state shall take measures "aiming at the maintenance or recovery of fishery resources to the level that enables maximum sustainable production."

● (0910)

Canada has required this of nations in the new NAFO convention that we've signed on to. Some other nations and we ourselves signed on to it.

In each of these cases there are regulations and further guidance that's developed that clarifies how governments can and should take into account economic and social considerations, how to take into account interdependent stocks, and how to adjust plans when nature doesn't respond the way we think it will. That's appropriate and necessary. You can't legislate biology. But in each case, the intent of the legislation is clear: when stocks are in trouble, governments must respond, not "consider" responding.

Of course, this matters because the need to rebuild our fisheries has probably never been greater. We really have halted some of the worst cases of overfishing that happened in decades past, but many of our fisheries remain depleted, often decades after collapse. We are left in the vulnerable position now of being highly dependent on only a handful of species to support the bulk of the economics of the fishing industry, like lobster, crab and shrimp, obviously.

Canada's marine fish populations have declined, as you've heard, by 55% since 1970. That's over a half of our biomass of fish in my lifetime. According to DFO's most recently published numbers, there are only three rebuilding plans in place for the 21 stocks that DFO has confirmed to be in the critical zone. DFO often continues to allow directed fishing on stocks in the critical zone even in the absence of a rebuilding plan or management reference points. Northern cod, of course, which collapsed in 1992 and has been under a moratorium for 26 years, as this committee noted, is still without a rebuilding plan, and there is no identified upper reference point. Nonetheless, management decisions continue and allow fishing levels to increase on a fragile stock, giving it the dubious privilege of being the largest groundfish fishery, I believe, in Atlantic Canada right now, while still under a moratorium.

It is our view that this historical lack of priority on rebuilding, despite policy commitments to do so, and on implementing rebuilding plans is directly attributable to the lack of legislative guidance and a legal duty. This committee has the opportunity to fix that. There is strong evidence, I'll add, too, that adding a legal duty to create rebuilding plans makes a difference—a big one. For example, since the United States legally required rebuilding of depleted fish stocks, 44 stocks have been classified as rebuilt since 2000, generating, on average, 50% more revenue than when they were overfished. In the EU, the number of stocks with a total allowable catch, based on science to produce maximum sustainable yield over time, has gone from two, in 2007, to 53, in 2016. Cod, of course, once collapsed in Europe as in here, has recovered in the North Sea, in Norway, and in the Barents Sea.

Canada has committed to rebuilding international agreements like the United Nations fish stocks agreement, the FAO Code of Conduct for Responsible Fisheries, and the NAFO convention. It's already departmental policy. What we're missing is the legal guidance.

We recommend that you amend Bill C-68 by including a legal requirement for the minister to develop rebuilding plans when stocks have fallen into the critical zone; to set a target to rebuild stocks out of the critical and cautious zones and back to healthy levels as advised in the sustainable fisheries framework of DFO right now; and to include a timeline and guidance on timelines for rebuilding.

Obviously, this is not a silver bullet. This kind of duty needs to be matched by good science, good management, strong enforcement, and it should be done in partnership with the communities and people who rely on and are deeply connected to our oceans. Countries that have this positive legal duty to act have healthier and more stable fisheries than those that do not. Surely that's what we all want.

In our brief we will provide specific wording for the committee to consider.

We look forward to your support and discussion. Thank you.

● (0915)

The Chair: Thank you very much, Mr. Laughren.

Going to the government side for the first seven minutes, we have Mr. McDonald, please.

Mr. Ken McDonald (Avalon, Lib.): Thank you, Madam Chair.

Thank you to our witnesses who are appearing in person, and of course, Mr. Sullivan, who's appearing by video conference.

It's good to talk to you again, Keith. I know we met one day last week for a brief chat.

You spoke about the owner-operator and the importance of it to the fleet. You mentioned you represent about 10,000 harvesters. FFAW represents plant workers; people involved in the fishery, both inshore and offshore; and people who work on the vessels. This is part of who you represent in the fishery. You have a wide catchment. You're speaking for everybody, basically. When it comes to the owner-operator, you mentioned what's been happening, and hopefully it will change in the bill going forward. What do we do to correct what's already happened? Do you foresee any way to reverse what's taken place with regard to corporate ownership versus owner-operator?

Mr. Keith Sullivan: Yes, absolutely, I do. I think there have been some small steps made to investigate where some of these obvious trust agreements and controlling agreements have been taking place, so these agreements that right now are outside policy should be illegal and hopefully will be soon.

What's got to happen is more resources and investment. I know there's some money made available to help implement this bill, so it will be important that we have the investment to see who is going out and really undermining this important economic policy. What it really comes down to is putting some work, time, and investment into it, because, for places where companies will be losing a licence, for example, that may have value of a million dollars, $2 million, or $3 million. There are pretty significant penalties. That's not a very safe investment to people willing to just leave those hanging out there.

Really, it's good to have it in policy and now in legislation and regulation, but you really need to follow up on such an important economic cornerstone for our provinces, particularly Newfoundland. As you said, we absolutely depend on it, and it's the biggest game in town for most of our rural and coastal regions. It goes right from the harvester to the plant workers, to anyone who's trucking, to all the existing businesses there, right down to what our municipal governments run on, the value from the fisheries. It is absolutely key, and that's why these are some of the most significant changes we've seen for some time.

The follow-up investment is the part that I was going to end off on if I'd timed myself a little better. That is the other key element in this.

● (0920)

Mr. Ken McDonald: In saying that, Keith, you mentioned, too, about young people being able to get into the fishery, but in many cases, you hear tell of a corporate entity buying an enterprise or a controlling interest in an enterprise through these trust agreements and paying millions of dollars for it to any particular fisherman or any particular enterprise.

How can we make it affordable for the new entrant or young person to get involved in the fishery at that level when the quotas are so expensive? It's only the big corporations that have the ability to pay that kind of money. How do we make it so that the fishermen, the people in the boats, can afford to buy those quotas and those enterprises?

Mr. Keith Sullivan: Really, what my experience has shown is that, if there's a good ability to make a living and raise a family in the fishery, people will invest. It's not like any other business. You have to have a business case that makes sense, and people will get into it. People really want to live in the rural parts of our province, and fishing is a great livelihood a lot of times.

What we've seen in the past are young people, maybe off the deck of a boat, a young person who's grown up in this community, had an opportunity to get a licence, but these companies, who very obviously have deep pockets—sometimes national, sometimes international companies—always had the ability to outbid other groups. If you're a person just going to the bank and trying to get that money together, they're always able to out-compete people, and their business plan was totally different. They were able to make up the value in other ways, such as by not paying people as much when they got control of the licences. Really, removing those puts young harvesters on a level playing field. We can certainly look at other things for young harvesters as well.

Mr. Ken McDonald: Mr. Laughren, you mentioned something that I guess is pretty hard for an MP from Newfoundland and Labrador, the northern cod moratorium that started back in 1992—it's 26 years now—and the lack of a proper rebuilding plan and maybe a poor management plan to start with. As Mr. Sullivan said, the fishery is very important economically and socially for some 500 communities in just Newfoundland alone.

What do you say to those people who depend on the bit of quota they do have to have a make-or-break year? With the cod being in the critical state that it is, even though there's a moratorium and there is some fishing taking place, do we cut it off completely? How do you balance that with the communities and the survival of the stock?

Mr. Joshua Laughren: The obvious point we all agree on is that overfishing of stocks, including cod, has done far more to hurt communities in Newfoundland than any conservation or conservationist has. These are tough decisions. The idea of developing a proper plan and setting goals in advance actually means you need to have that discussion, and it's a tough one. Have it before, not after, you reach these thresholds. We're in the position now of expecting a decision from the minister on cod shortly, and nobody has any guidance or sense of where he's going to go with it because there's complete and utter discretion on it, with no plan to guide us. Twenty-six years after the collapse, we still don't have agreement on where we're trying to go with the stock or at what levels we will start to allow fishing. Those are tough discussions that we ought to have, and we ought to have them before we get to this stage.

The Chair: Thank you, Mr. Laughren.

We'll move to Mr. Doherty now for seven minutes.

Mr. Todd Doherty: Thank you to our guests.

I want to follow up with Mr. Laughren on your question. If you followed the testimony from previous committees, this is something that is a big issue for me. In my opinion, it is management.

I would like your opinion. We have had DFO appear before this committee time and time again, whether it is this Parliament, the previous Parliament, or the Parliament before that. For 26 years, we have had DFO appear before the committee, before parliamentarians, and promise to do better, to be better, to get our fish stocks beyond the critical level. What is the issue that we seem to have? Is it an institutional issue, or is it strictly a management issue within DFO?

● (0925)

Mr. Joshua Laughren: I think it's certainly more than just a management issue within DFO. When you see the same thing happening over a generation or more, then you start to look at fundamental drivers, as opposed to one person making a bad decision.

Mr. Todd Doherty: Right.

Mr. Joshua Laughren: I think it is lack of guidance, and it's lack of a framework for making these decisions. I think we're all complicit. There are a lot of voices on a lot of different stocks, voices that are calling for stocks to be reopened before they should, or for quotas to be set higher, to be pushed to the upper, upper level or even beyond what the scientific advice is. Those voices come from outside the department, too. While I want to hold the department accountable for decisions, I also want to make sure that we're being fair and accurate about where these drivers are coming from, and they're broad.

Mr. Todd Doherty: We do nothing to create more fish. That's an observation. We like to talk a good game, but we do nothing to create more fish.

Mr. Joshua Laughren: I wouldn't be as stark as that. I think we have examples of good management in Canada. We have examples where stocks have come back, good-news stories like halibut. I take that as a really positive point. When you take the pressure off stocks and let them recover, in almost all cases, they do. Just give them the time, and let nature take its course, if you will.

Mr. Todd Doherty: You mentioned a few countries that have had some success. Could I ask that your group table that with our committee, perhaps a little bit more in depth? Our analysts could get that information for us as well.

Mr. Joshua Laughren: For sure.

Mr. Todd Doherty: Mr. Gratton, I really appreciate your testimony on this piece of legislation. In your opinion, did the changes in 2012 make it easier for proponents to get their projects approved?

Mr. Pierre Gratton: Not mining proponents, no.

Mr. Todd Doherty: Okay. Others would have people believe that it was willy-nilly, that once those changes were made, project proponents had free rein to go and do whatever they wanted. We've had previous testimony from witnesses who said that this is not the case. As a matter of fact, it gave some clarity as to the process to move forward, but it didn't give basically a blank cheque to go out and do projects. Is that correct?

Mr. Pierre Gratton: Do you want to answer that? Go ahead.

Ms. Justyna Laurie-Lean (Vice-President, Environment and Regulatory Affairs, Mining Association of Canada): The differences between the actual interpretation of the act and the changes, at least for our sector in inland waters, were very subtle. Some of the biologists that work in our sector would argue that the current act is scientifically more sound because it focuses on the productivity of the fishery broadly and it allows accounting for the food intake, the quality of habitat, and so on, better than the previous act or the future act to some extent.

Mr. Todd Doherty: You're referring to the current act, meaning the changes that were made in 2012.

Ms. Justyna Laurie-Lean: Yes. However, it fell down in the compliance, promotion, and implementation. A lot of people were left with an inaccurate understanding of what the act is.

Mr. Todd Doherty: Mr. Gratton, you mentioned that basically the previous six years' worth of work would likely have to be scrapped and started over. Do you know the number of projects that would be affected?

Mr. Pierre Gratton: It's only about a half dozen. It's not a lot, but for these projects, it's.... In particular, in the one example we gave you, they have redone it already, but they'd have to redo it a second time.

Mr. Todd Doherty: Okay.

Are these major projects?

Mr. Pierre Gratton: Yes, these are major mines. In fact, this particular project is in your province.

Mr. Todd Doherty: Do you have an economic impact on that?

Mr. Pierre Gratton: The cost for this one is probably in the low millions. The further delay before the project can actually get up and running also has an impact.

Mr. Todd Doherty: Mr. Sullivan, I appreciate your comments on the owner-operator and fleet separation being the two most important economic development tools for Newfoundland and Labrador. Your organization has recently come out very vocally against the minister with respect to the TAC with snow crab, the pricing with snow crab, and the surf clam decision.

Does it not give you and your organization some fear that Bill C-68 gives the minister more of this kind of authority, which will have such a great impact on your membership?

● (0930)

Mr. Keith Sullivan: First of all, the biggest benefit we would see is how we actually follow up with the protection and promotion of the owner-operator fleet.

Mr. Todd Doherty: I'm specifically talking about the ministerial authority.

Mr. Keith Sullivan: Yes.

As I mentioned before, inshore vessels have incredible capacity now, and they could harvest surf clam. That was an example where we saw good jobs transferred out of Newfoundland and Labrador to another province, really destabilizing what has been a very solid workforce. The opportunity to make that kind of decision existed before. We feel that in many ways this is actually improved and more focused on getting input from people in communities.

The Chair: Thank you, Mr. Sullivan, I have to cut you off there.

We're going to Mr. Donnelly for his seven minutes please.

Mr. Fin Donnelly: Thank you, Madam Chair. Thank you to all our witnesses for being here to provide testimony on Bill C-68, the Fisheries Act, probably one of the most important pieces of legislation in the country for protecting our fishery.

We have spoken about the importance of trying to prevent overfishing. That's a critical case. We've talked about the importance of rebuilding plans. I would also submit that the importance of habitat or habitat loss is critical across the country when we're talking about flourishing fishery.

Mr. Laughren, if I could start with you and Oceana, you provided some specific examples of other countries and how rebuilding plans in their legislation is important. You provided those specifics.

You mentioned right at the very end of your testimony that you could provide wording on amending Bill C-68 so that's included. Are you able to get that in to us as soon as possible?

Mr. Joshua Laughren: Yes, we will. We've been consulting with the department on this, with the minister's office, in part to make sure we avoid any unintended consequences.

I believe the last day for amendments is May 10. We will make sure we're in before that, and hopefully significantly before that, so as soon as possible.

Mr. Fin Donnelly: What's at stake if this legislation doesn't include wording on how we rebuild our stocks?

Mr. Joshua Laughren: We have roughly 27 stocks that are probably in the critical zone. We've lost 55% of our fish. If we talk about institutional changes, I don't see any. We can expect that downward trend to continue over time if we don't take this opportunity to fix it.

If we put that guidance in there, backed with good science, this can be the inflection point that puts us on track to increased abundance in our oceans.

Mr. Fin Donnelly: In terms of other work that you're doing, how important does this rate with other campaigns or things that you think Bill C-68 needs to include?

Mr. Joshua Laughren: I feel pretty comfortable saying that it's certainly our top priority now.

I was teaching a class recently, and I reflected that I think this bill, and this element of the bill, is the most important thing I've worked on in my 20-year career in conservation. I believe strongly about the importance and the impact and the opportunity that we have on this.

Mr. Fin Donnelly: That's I think a global perspective, and obviously a national perspective here in Canada. I appreciate your testimony and your being here today.

Mr. Sullivan, you emphasized the importance of owner-operator and fleet separation.

I'm wondering, again, if you have specific wording that you could provide the committee to strengthen Bill C-68 on how that's done, certainly on the east coast but also even on the west coast. You have more experience in Atlantic Canada than we do on the west coast. I come from western Canada, British Columbia. We don't enjoy that strength of the owner-operator, fleet separation policy in British Columbia.

If you're able to provide wording and any wisdom or insight on how the west coast would follow your lead on the east coast, that would be helpful.

● (0935)

Mr. Keith Sullivan: Thanks very much.

We work with our colleagues in British Columbia, and obviously they're envious. Even if it was somewhat flawed and people could get around it, they're envious of our owner-operator and what it's done to maintain strong economies in our coastal communities.

We will be following up with some details and working with some other harvesting organizations to provide more details in the next week or so.

Is it possible that I could indulge very quickly on rebuilding plans as well?

Mr. Fin Donnelly: How much time do I have?

The Chair: You have two and half minutes.

Mr. Fin Donnelly: Sure, absolutely.

Mr. Keith Sullivan: I know I'm taking your time. I'll try to make it very brief.

I would agree, and harvesters and people in our communities would agree, on a need to have strong, healthy, robust, sustainable fisheries. We need to have our fisheries as healthy as possible.

The problem, from what we've seen from the Department of Fisheries and Oceans—and again it probably comes to resources—is that they have not been able to effectively have a full ecosystem-based management. We've seen ad hoc precautionary approaches. We've seen ad hoc and inconsistent stock reference points. It has made it difficult for harvesters to have confidence that legislating a rebuilding plan would make sense. We want the same things. We just don't have the confidence in that now.

Even specifically, when we look at northern cod, which was mentioned, we've gone from 25,000 tonnes in 2006 to over 300,000 tonnes just this past year—incredible growth by any measure for a stock. The harvest is the lowest it's ever been, only at a couple of per cent. The issue there is the other predators; namely, harvesters believe seals are having an issue.

We'd say to look at the real issues. We need to have harvesters more involved rather than a prescriptive rebuilding plan when the department is not ready.

Mr. Fin Donnelly: Great, thank you.

I think your point is well taken. We can have strong laws and excellent policy, even strong regulations, but we absolutely need to resource the department to carry out what's enacted in law and in our policies. I appreciate that.

In the final minute that I have, Mr. Gratton, could you tell the committee if you have an idea of how many water bodies frequented by fish are affected by mining projects in Canada?

Mr. Pierre Gratton: No, there isn't a concrete number that I could give you.

Mr. Fin Donnelly: Is there a way that your organization could take a look and find out how...?

You know how many mines there are in Canada.

Mr. Pierre Gratton: There are about 200 active mines.

Canada is a very wet country, and in parts of the north you find more water than there is land. I think you would find that pretty well all human activities in Canada affect the water, not just mining.

Mr. Fin Donnelly: Would you say that almost all those mines affect one water body?

Mr. Pierre Gratton: Not necessarily. It depends where they are .

Mr. Fin Donnelly: You could perhaps look into that and get that to the committee.

I think that would be very important, because obviously you can't —

The Chair: Thank you, Mr. Donnelly.

Can you provide that information?

Ms. Justyna Laurie-Lean: I don't think we can, partly because, especially when you go north you're talking water bodies, so—

The Chair: Okay.

Ms. Justyna Laurie-Lean: With one thousand in one little square kilometre, it's very difficult to make that number.

The Chair: Since we had agreed to five minutes off, I'm afraid that is the end of the questioning for this round. I want to thank our guests today.

Mr. Sullivan, thank you for appearing via video conference.

Mr. Gratton, Ms. Laurie-Lean, and Mr. Laughren, thank you again for appearing today. We're going to suspend for a few minutes until we change witnesses.

● (0935)

(Pause)

● (0940)

The Chair: Welcome back to the second hour on the Fisheries Act review.

Appearing before committee in this hour, from the Canadian Electricity Association, we have Sergio Marchi, president and chief executive officer, and Terry Toner, director of environmental services, Nova Scotia Power. We have Ian MacPherson, who is the executive director from the Prince Edward Island Fishermen's Association. On teleconference, we have Dr. Susanna Fuller from Oceans North Canada.

We are going to start with the Canadian Electricity Association.

For your first 10 minutes, will you both be presenting?

Hon. Sergio Marchi (President and Chief Executive Officer, Canadian Electricity Association): That is correct.

The Chair: Will that be five minutes each?

Hon. Sergio Marchi: Roughly. I think a little longer to Terry because he's smarter.

The Chair: You just decide when to pass it on. How's that?

Thank you. Go ahead.

Hon. Sergio Marchi: Thank you very much to you, Madam Chair, and to the members of this committee for inviting the Canadian Electricity Association to appear before you this morning on your review of Bill C-68.

I'm pleased to represent our association. To my left is Terry Toner, director of environmental services for Nova Scotia Power, as the chair alluded to.

By way of context, CEA is the national voice and forum for the Canadian electricity sector. Our membership is comprised of the major generation, transmission, and distribution companies, as well as the full spectrum of our suppliers. As you all know, electricity is indispensable to the quality of life of all of your constituents and all Canadians, and to the functioning and competitiveness of a modern economy.

The sector is also uniquely positioned to enable Canada's clean energy future. Currently, we are at 82% GHG emissions-free, which ranks us among the cleanest sectors in the world. We have reduced GHG emissions by some 30% since 2005 and we are on track to do so again by another 30% by 2030. No other sector in Canada comes close to matching these results. As we are also a hydro-rich system, our electricity production is highly dependent upon the responsible use of water resources, which is something that came up at the tail end of the previous engagement with witnesses. Water is also used at nuclear and thermal generating facilities. As such, our sector remains committed to protecting and conserving all of our natural resources.

However, it needs to be said that our future, and that of other industries, becomes less certain through the cumulative pancaking of wide scoping federal, provincial, and territorial legislative and regulatory changes. This pancaking cumulatively is becoming dangerously heavy and no one level of government takes accountability for this overall burden. Each government only considers its own respective layers. This needs to change because our business environment must be competitive and it must provide investor confidence, if we are to contribute to the continued economic prosperity of Canada. Also, all these policy decisions ultimately add to the cost of electricity to consumers, who are our customers and your voters.

That said, we believe that Bill C-68 is a missed opportunity for the federal government to anchor the Fisheries Act, clearly and explicitly, in the responsible management of fisheries and overall fish habitat, rather than the protection of single fish and microhabitats.

With that in mind, let me turn to Terry, who will outline our five specific recommendations to improve the practical application and impact of this act.

● (0945)

Mr. Terry Toner (Director, Environmental Services, Nova Scotia Power, Canadian Electricity Association): Thank you, Sergio.

I would like to begin by thanking you all for the time we are being given.

Our sectoral experience with the application of the Fisheries Act and our long-term working relationship with the Department of Fisheries and Oceans leaves us in a qualified position to offer constructive feedback and practical recommendations to amend the Fisheries Act.

The first of our recommendations is that the proposed definition of "fish" and "fish habitat" should be considered with a population-based approach. An expansive definition of fish habitat and the interpretation of the term "fish" to be any single fish have proven burdensome and prohibitive in the past. This approach creates unmanageable legal risk for both existing and new electricity facilities because any incidental death of fish can then be construed as being in contravention of the act, regardless of the actual effects on populations or the ecosystems.

In terms of extending this beyond "fish" to "fish habitat", I would point out that the definition of fish habitat in the bill encompasses anthropogenic structures never intended for fish habitat. The regulation of such structures under the Fisheries Act would serve no useful purpose yet would encumber the regulatory system and add cost to the electricity supply system flowing to ratepayers.

The definitions and relevant provisions deserve careful attention to ensure reasonable interpretation and application. We look forward to accommodations, preferably in the act itself, if not then certainly in the regulations and guidance materials for the application of the act.

Second, the purpose statement should focus on management and control of fisheries. We're encouraged by the inclusion of a purpose statement, which is something we requested in front of this committee last year. However, as currently drafted, the protection and conservation of fish and fish habitat is set out as a distinct and self-contained purpose, whereas it should be subsidiary to the responsible and proper management and control of the fisheries. Conservation and protection efforts may then be properly prioritized and applied with meaningful benefits for fish populations.

To address this, we recommend combining the two clauses, so the purpose of the act reads,"The proper management and control of fisheries through the conservation and protection of fish and fish habitat, including by preventing pollution."

Third, provisions to manage flow parameters should recognize existing regulations. While complying with the Fisheries Act, member companies also must operate under the authority of provincial, territorial, and in some cases international bodies. Agreements with such bodies, including water management authorities, prescribe water property matters such as flow, temperature, and other physical properties.

In allocating broad new powers to the minister, in particular as regards water flow, the proposed amendments to the Fisheries Act do not fully recognize the potential interaction with these other authorities, posing a significant risk of regulatory duplication, conflict, and uncertainty.

We would suggest that prior to making any order affecting water flow and other such matters, the minister be required to consult with any jurisdictions that may have overlapping authority. Existing agreements for water management are long-standing and address specific regional needs. Consultation to ensure jurisdictional conflict and overlap is avoided would be prudent.

Fourth, increasing habitat banking opportunities. We are very pleased with provisions in the Fisheries Act that bring about a habitat banking system. We see this as an opportunity to advance effective and efficient management of fisheries. In an effort to maximize both economic and environmental benefits, we recommend that in developing a regulatory scheme for habitat banking the minister be enabled to recognize not only proponent but also third-party contributions to a conservation project, and to allow the exchange and trade of habitat credits.

This can be achieved by minor changes to the definition of "conservation project", "proponent", and "service area", providing capacity for greater flexibility toward the efficient restoration of habitat. Specific language will be provided in our forthcoming written submission.

Fifth, and last, is requirements for restoration of habitat. For current and future ecologically sensitive areas, the proposed amendments to the act create ambiguity for the responsibility of proponents to contribute to restoration requirements. We would recommend that the establishment of ecologically sensitive areas and restoration plans be informed by consultations with affected parties, including electricity producers. There should also be authority for the Governor in Council to establish, as necessary, a process for fair and reasonable compensation.

With that, later this month we will submit to the committee our full submission of the details regarding the intent and wording of our proposed amendments and we commend them to your attention.

● (0950)

Thank you. I'll turn it back to Sergio.

Hon. Sergio Marchi: Thank you very much, Terry.

In conclusion, as Terry mentioned, CEA has long worked well with DFO to ensure the protection of fish and fish habitat on behalf of all Canadians.

We trust you will find today's presentation, and our fuller submission that will follow next week, useful as you finalize Bill C-68. We also hope you will give serious consideration to the proposed amendments we suggested this morning.

We look forward to continuing to work not only with DFO but also with this parliamentary committee to develop policy, regulations, and codes of practice that will have practical and effective application while protecting Canada's fisheries into the future.

Thank you very much for your attention. We're happy to answer any questions members may have.

The Chair: Thank you very much.

We're now going to go to Dr. Fuller, who is coming in by telephone.

Dr. Fuller, go ahead for your 10 minutes, please.

Ms. Susanna Fuller (Oceans North Canada): Thank you.

Thank you for inviting me to present today in my new role at Oceans North Canada.

Having been involved in previous attempts to amend and modify the Fisheries Act in 2006 and 2007, I want to commend the current government and the work of this committee for finally bringing us, on the 150th anniversary of Canada's Fisheries Act, to the point where significant amendments have been proposed, the majority leading to an improvement and a modernization of Canada's Fisheries Act.

Given the importance of fish and fish habitat to coastal communities, indigenous peoples, and Canadians in general, we do need a Fisheries Act for the 21st century and an act that we can take with pride to Canada's presidency of the G7, particularly with the priority given to oceans.

My comments are based on my history as part of the national fish habitat coordinating committee, which, together with DFO, was a member of several advisory committees for commercial fisheries in the belief that there's an urgent need to ensure that Canada's laws are consistent with the need to reconcile our history with indigenous peoples. They are also based on the belief that the management of a public resource must have a strong legal and policy framework to ensure that its sustainability is part of diversity, valuable ecosystem services, support for independent fishermen, and the future of coastal communities.

As you may know, the initial response to Bill C-68 was very positive, and this is reflective of the broad, though swift, consultative process that was undertaken. There are several elements of Bill C-68 that are significant improvements. I want to take note of these before I get to the few key areas where I believe amendments are needed to ensure that the act adequately provides for fisheries management and protection, conservation of fish and fish habitat, and access to fishing resources for adjacent communities.

The improvements that I think are good are the addition of a purpose section; expansion of factors to be considered in decision-making; measures for protection of independent fishing fleets; restoration of HADD; inclusion of a rebuilding clause for the first time; establishing permanency for fisheries closures, particularly those that are to count towards marine protection targets; creation of advisory panels that can ensure there's an increased use of expertise and public engagement in the implementation of the act; and finally, the five-year review of the act, which will ensure that regular updating is done when needed.

However, on closer examination, and after taking the time to think through how the new act would begin to address existing and long-standing problems with fish and fish habitat, there are a few key areas that, if left as now written, will undermine the achievement of the proposed purpose over time. It's generally accepted that fish populations decline primarily through two key factors: we harvest too many of them, or we destroy too much of their habitat. That's notwithstanding natural mortality and climate change, but without strong legal measures in place, there's no way to ensure that we are managing the harvest properly or able to mitigate and avoid habitat destruction. It is with this view that recommendations for improvements are made.

As you're likely aware, the environmental and conservation communities have been working closely together so that we are concise and aligned in our recommendations for amendments. I've also reached out to the fishing industry to better understand their concerns for areas of support for Bill C-68. The recommendations below are consistent with those put forward by West Coast Environmental Law, Ecojustice, Oceana Canada, and others. I align largely with comments made this morning by Keith Sullivan and Ecotrust Canada. It's interesting to note that the Mining Association of Canada is also aligned with some of the comments from Ecojustice. I think that's actually a unique situation, where we have such a broad constituency acquiescing in so many of the same things.

I will expand upon my six recommendations in a written submission with specific language, but the first one is to strengthen the purpose of the act. It's great that there's a purpose—it's much needed since 1996—but I believe it should be aligned with international agreements and conventions. I suggest that at a minimum we should add long-term conservation and sustainable use of the fishery to the purpose of the act.

Second, there is no mention of section 35 of the Canadian Constitution, and I note that in Bill C-69 it is included. To enshrine indigenous rights in this legislation and have consistency across Canadian legislation, I think section 35 should be added. I am mentioning this for the first time. My colleague Josh Laughren and those at Oceana give lots of reasons for why we need to rebuild the Fisheries Act. I feel strongly that this does need to be in the act and does need to be strong.

In Atlantic Canada, there are 17 species of marine fish that are either targeted by commercial fisheries or impacted by them, and these species are considered threatened or endangered by COSEWIC, the Committee on the Status of Endangered Wildlife in Canada, which advises on the Species at Risk Act. Marine fish do not tend to get listed under the Species at Risk Act, mainly for socio-economic reasons, many of which I have some sympathy with. However, I believe that if we had a strong Fisheries Act that required the rebuilding of fish populations we might not find ourselves in such dire straits, with so many species considered endangered, some of which are vital to our coastal communities.

● (0955)

Strengthening the current rebuilding provisions means there is a legal backstop to the Species at Risk Act, which I would think the fishing industry would support. It gives us another tool to rebuild fish stocks without their being listed under the Species at Risk Act, although in some cases that may be the best tool. The Fisheries Act should require that rebuilding plans be in place and that they take into account ecosystem considerations, including climate change, with regard to timelines and targets. Failing to do this with Canada well behind other fishing nations and their legislation—many examples were given by Oceana—also fails to align us, again, with the international agreements to which Canada is a party or a signatory.

Fourth is on reporting to Parliament and to Canadians. Reporting on the status of fish habitats and the status of population rebuilding should be done on an annual basis. Currently, Environment and Climate Change Canada reports on the fisheries checklist from DFO. It seems a bit misplaced. I think DFO should have to report on its own goals, including fish habitats and the fish stocks and rebuilding. There are excellent examples of how this is done that are easily communicated to the public, and one of those is done by NOAA to the U.S. Congress. It's very readable. It's an infographic. It's not difficult to do. I would recommend adding reporting on rebuilding in proposed section 42.1

Finally, with regard to cumulative effects, we need to broaden the requirement of what's included in the public registry, proposed section 42.3. The public registry for projects is much needed. The NGO community has been advocating this for a very long time, and we're glad to see it in there. However, it's important that all projects where a fish habitat is impacted, whether through a letter of advice or through a departmental authorization, are included. Organizations on the ground, including DFO, through a pilot project in the gulf region, have already mapped areas where fish passage is blocked or a habitat has been altered. In practice, this is happening. It shouldn't be so difficult to add it to a public registry that is geospatially referenced. Without low-risk projects being included, planning and mitigation on a watershed level will be impossible, and I think colleagues at the Canadian Mining Association made reference to that as well.

In closing, a very strong constituency in Canada is interested in helping to implement a new Fisheries Act. This is a unique situation where thousands of volunteers through stewardship organizations and indigenous communities are working to identify barriers to fish passage and damage to fish habitat, to work on restoration. Increasingly, there is more transparency and multi-stakeholder engagement at fisheries advisory committees with regard to commercial fisheries where common ground can and is being found and actions can be agreed upon that help protect fish habitat and rebuild fish populations.

We can also use new tools to implement a new Fisheries Act, including mapping and GIS, electronic monitoring, just as examples, that can make data collection and data analysis easier. In the past attempts to upgrade the act, we didn't have those tools and now we do. They can make implementation much simpler.

In closing, as you consider and review Bill C-68, I hope you will be as ambitious as possible in this historic moment. It is the 150th anniversary of the Fisheries Act, the second act after the British North America Act, and this current act, Bill C-68, gets us up to about the 1970 level. We need to bump ourselves up to this century and give us a Fisheries Act for the future. We're very close. This act is and will continue to be foundational to who we are in Canada.

Thank you, and I'm happy to take any questions.

● (1000)

The Chair: Thank you, Dr. Fuller.

We're going now to Mr. MacPherson for 10 minutes, please.

Mr. Ian MacPherson (Executive Director, Prince Edward Island Fishermen's Association): Thank you, Madam Chair, and members of the Standing Committee on Fisheries and Oceans for the invitation to present this morning.

My name is Ian MacPherson. I am the executive director of the Prince Edward Island Fishermen's Association.

For those of you who are not familiar with the PEIFA, we have six local fishing organizations that are represented on our board of directors and form the backbone of our organization. We advocate on behalf of over 1,260 harvesters. Our primary species are lobster, herring, mackerel, and tuna.

The PEIFA is an organization that's very active in all areas of the fishery, as our contribution to the provincial gross domestic product is one of the highest in Canada for a fisheries sector. Therefore, many of the proposed changes to the Fisheries Act will directly and indirectly impact our harvesters.

We have had the privilege of presenting to both this standing committee and in other forums over the past two years on these proposed changes, and we want to emphasize that our comments and concerns come from a position of wanting to make the fishery better for harvesters now and many years into the future.

This morning I would like to address six areas of change. The PEIFA agrees that the Fisheries Act of Canada was long overdue for modifications in many areas.

First, the PEIFA would like it noted that there exists a wealth of traditional and community knowledge in our indigenous and non-indigenous fishing communities. This knowledge should be an integral part of any decision-making progress. Both our communities share a common goal of wanting our fishery to flourish for many more generations. We want to underscore that science does have its rightful place in resource management issues, but that the observations and input of all those on the water also need to be respected and taken into account in the decision-making process.

Second, the PEIFA would like it noted that the use of advisory panels can be helpful in the decision-making process. It is important that any panel have a well-rounded representation in an effort to ensure fair and balanced representation and that ex-government employees or special interest groups are not overrepresented. Industry representation must also be included in the composition of these panels.

Third, the PEIFA supports the modernization of the regulatory framework of the Fisheries Act and has been an active member of the Department of Fisheries and Oceans Canada policy streamlining workshops that have been held over the past few years. It is apparent that significant policy variances from one fishing area to another exist, many times regarding the same policy. We have experienced situations where a substitute operator can be used for many days in one jurisdiction and for very few days in another, with very different processes for authorization. We are working towards policies that are fair and comprehensive and also address situations that require a reasoned, compassionate approach. We need to be mindful that we do not change too many policies for the sake of change. We also need to ensure that changes are put forth by legitimate fishing organizations and that small special interest groups within the fishery are not directing changes that could be detrimental to the industry as a whole.

The PEIFA wholeheartedly supports the entrenchment of owner-operator and fleet separation policies into law. We commend Minister LeBlanc for pushing this long talked-about change from policy into legislation.

Fourth, we strongly support the protection of fish habitat. This includes making sure federal environmental reviews take precedence over provincial reviews when the reputation of our Canadian seafood industry is at stake. Currently we are advocating for a federal environmental review of the proposed effluent discharge pipe in the Northumberland Strait from the Northern Pulp mill in Abercrombie, Nova Scotia. The PEIFA, along with members from the Gulf Nova Scotia Fleet Planning Board, the Maritime Fishermen's Union, and the Pictou Landing First Nation are following all protocols to have a federal review carried out.

With the current emphasis on new technology we must ensure that Canada is a world leader in improving and maintaining our oceans when a new industry starts up or existing industry upgrades are required. We support that ministerial orders can be issued when the physical characteristics of water, such as water temperature and chemical composition of water, are changed, as outlined in proposed subparagraphs 34.3(2)(g)(i) and 34.3(2)(g)(ii).

Fifth, the PEIFA continues to have concerns regarding the impacts of oil and gas exploration in larger and larger areas off the coast of Atlantic Canada. We understand the needs of provinces in seeking additional revenue streams; however, any potential royalty or revenue-sharing arrangement will not come close to offsetting potential losses to the fishing and tourism industries should a significant spill or leak occur.

We are seeing the migratory patterns of some species change, and we must look at all potential contributing factors rather than solely at shifting food sources. We continue to have concerns that oil and gas extraction could be allowed in marine protected areas and that compensation may be available to oil and gas corporations, but not fishers, should no-take zones be established in MPAs.

● (1005)

Sixth, the PEIFA strongly supports changes to the Fisheries Act that enhance the powers of conservation and protection departments, and officers. We are pleased that additional financial resources are being committed to C and P for the valuable work done. We understand that legal decisions are beyond the scope of these legislative changes. However, the PEIFA continues to advocate that penalties be more in line with the seriousness of the offence. Our captains take great pride in their knowledge and skill on the water. A level and fair playing field ensures that our industry can survive and flourish for many more years to come. Recently, on P.E.I., there have been some fines and suspensions that are more reflective of the seriousness of the offences committed. We hope this trend continues.

In summation, the PEIFA is an organization that will continue to be active in as many areas of the fishery as our internal resources allow. We will continue to advocate for changes that make sense as organizations, and governments must all be accountable for our actions as our fishing industry experiences an unprecedented period of new challenges and change.

I would like to thank the Standing Committee on Fisheries and Oceans for the opportunity to present and provide what I hope is viewed as valuable feedback. I would be glad to answer any questions the committee members may have.

Thank you.

The Chair: Thank you very much, Mr. MacPherson.

We're going to go to our first round of questioning.

I would like to remind members that because we will be going in camera 10 minutes earlier, they may want to share their time, because we probably will only get through the first round of questioning.

Mr. Morrissey.

Mr. Robert Morrissey (Egmont, Lib.): Thank you, Madam Chair. My question is to Mr. MacPherson.

You referenced the use of advisory panels as a useful tool. One of the criticisms that I receive from the fishing community is that the same people appear on the advisory panels too often. Therefore, there's a particular view being expressed at DFO.

I agree with the process, but how can we share that in the consultation process? We receive a lot of criticism from the industry that the consultation process used by DFO is not effective, and that it's very selective.

Mr. Ian MacPherson: I guess I was referring to some of the federal panels. They're just starting to come into place. For example, this weekend we present to a federal panel on marine protected areas in Moncton.

Certainly, for a process to have integrity, you need to have people there who are respected and who represent different parts of the industry. We are seeing some progress in the consultation process with DFO, but we find that there's the initial consultation and then one of the gaps that we would like to see improvement on is follow-up meetings prior to a policy being announced, because we're still getting some surprises and that doesn't work for everyone.

● (1010)

Mr. Robert Morrissey: We get a few, too.

Mr. Ian MacPherson: There are some gaps there that can be worked out.

Mr. Robert Morrissey: We agree with that, the gaps.

Ian, could you expand a bit on this substitute operator policy? It's very different. That's a concern I hear a lot from the industry, regarding the efficiency of processing the substitute operator when the need arises. I wasn't aware that there were differences.

Mr. Ian MacPherson: They're, I guess, in the amount of time that's allowable in a season.

One of the other things, for example...and this has been in place for a number of years. I believe Newfoundland has quite a few days that captains can take off for various reasons and have someone in their ship. I want to make it perfectly clear that we don't want to see the policy abused. If someone is not the captain, they should not be in the boat. That's why a compassionate approach also needs to be taken. At the end of the day, in our area, it's extremely difficult for captains to even get a day or two off for family reasons without having quite an extended process to authorize who goes in their boat.

Mr. Robert Morrissey: Does the proposed purpose of the act clearly consider fishery management objectives?

Mr. Ian MacPherson: We think there could be some more clarity around it. I mean, there are quite a number of changes that are being looked at, and that's why I wanted to loop in both the traditional and community knowledge, because sometimes decisions aren't made in the broader scope. An example I'll give was that a few years ago the harvesters on Prince Edward Island were quite concerned that the mackerel quota was staying the same year after year. They made recommendations for two or three years in a row—

Mr. Robert Morrissey: To reduce it?

Mr. Ian MacPherson: —to reduce it, yes. The quota stayed the same.

Mr. Robert Morrissey: The fishermen were advising DFO to reduce.

Mr. Ian MacPherson: Yes, which you probably don't hear of too often, but that was an actual case—

Mr. Robert Morrissey: And the department was going against it.

Mr. Ian MacPherson: —because of the observations on the water. In 2015, in the middle of our Marine Stewardship Council audit, a new set of conditions came across for mackerel because the quota got cut significantly. It's those types of things where I think the traditional and community knowledge could have had a better outcome for our industry.

Mr. Robert Morrissey: You represent 1,260 fishers. I suspect most of them are lobster fishers.

Mr. Ian MacPherson: Yes.

Mr. Robert Morrissey: Do you feel that Bill C-68 effectively enshrines into law the existing owner-operator policy and the fleet separation policy?

Mr. Ian MacPherson: Certainly, it's a good start. We'll review the language. If I could take the liberty of providing some language for the committee, we'll do that also.

Mr. Robert Morrissey: Do you have some observations to provide?

Mr. Ian MacPherson: Yes, now that it's getting closer, certainly.

Mr. Robert Morrissey: Very good.

I want to briefly go here, because it was an issue that I raised when officials were here before the committee. The department has committed additional resources to enhance enforcement and protection. Another area of concern I hear a lot from fishers is that they're doing their part, but they do not see the department stepping up to the plate in the area of protection.

The second part was—and I believe you briefly alluded to it, Mr. MacPherson—the courts imposing penalties and fines for fishery infractions because of the value, the significant value, of the product. There appears to be a disconnect between the deterrent from a legal or fine perspective and the reward for violating fishery regulations.

● (1015)

Mr. Ian MacPherson: One of the recent examples was that there were some fairly minor fines assessed to, unfortunately, some bad actors who had captured a number of female snow crab. Of course, with any egg-bearing females, in lobster or whatever, it's important for the resource to be sustained. We didn't really feel that the fine was in sync with the infraction, but since that time there have been some pretty stiff penalties coming down, and also suspensions, and that certainly sends a strong message

Mr. Robert Morrissey: Would your group submit an overview on that side, where the department could look at putting more minimums in?

Mr. Ian MacPherson: We certainly could do that because we want the resource to be sustainable, and it only takes a few people acting out to create some problems.

Mr. Robert Morrissey: I have one quick question for Ms. Fuller. Could you elaborate a little? You said the act is one of the oldest acts in Canada and this revision simply brings it up to 1970s level. We're at 2018. Could you expand a bit on where you see the gap between the 1970s and 2018?

Ms. Susanna Fuller: Absolutely. It was the first act after the British North America Act. I would say, when we look at some of the other legislation in other countries around fishery building and habitat protection, we see that our act doesn't quite get us to where we need to be in this century. That is also a comment I've heard from some DFO staff, that we've come this far, which is great, and it is a major overhaul of our—

The Chair: I'm sorry, Dr. Fuller, I have to cut you off. We're out of time.

Ms. Susanna Fuller: Okay.

The Chair: I have to go to our next person on the list.

Mr. Miller, please, you have seven minutes.

Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC): I'm going to split my time with Mr. Arnold.

The Chair: Do you want me to tell you at three and a half minutes, or are you just going to share?

Mr. Larry Miller: Yes, but I may be done before that.

To Ms. Fuller, for her information, the act was modernized in 2012. I think that is important.

Mr. MacPherson, you mentioned you represent 1,260 harvesters, and I want to enlarge a bit on what Mr. Morrissey asked you about advisory councils. We've heard many times, especially from harvesters, that the lack of consultation was a big problem. Do you see that these advisory councils are maybe not going a long way but at least are going partway to making that consultation more fruitful?

Mr. Ian MacPherson: If I'm talking about some of the larger federal ones.... I believe one of the first ones was just appointed around the marine protected areas, and there's no industry representation on that council. I guess that's my comment there. Certainly ex-government people have a place and groups that are interested in the fishery have a place, but industry should also be part of that, too, to give a balanced approach.

Mr. Larry Miller: Okay. I don't disagree that industry should be involved, but how do you improve, then, what we've heard so many times about the lack of consultation in the whole discussion, whether it's changes to the Fisheries Act or something else under DFO?

Mr. Ian MacPherson: To answer both questions, one of the things that just occurred to me is that, a lot of times, the terms of reference are very restrictive in terms of who can participate on those committees and generally exclude anyone who has been associated with the industry.

Mr. Larry Miller: Are you saying the kinds of rules put in place make it appear like somebody doesn't really want to hear the input or consultation?

Mr. Ian MacPherson: No. I wouldn't say that. I'm talking about actual members on some of these committees that Mr. Morrissey was referring to.

I think we need to see industry properly represented on these committees, but sometimes the terms of reference, or who can be on those committees, is restrictive and excludes people from industry.

Mr. Larry Miller: Do you think it's restrictive just for that reason? What's your read on that?

Mr. Ian MacPherson: I won't speculate. Maybe, back in the day, there wasn't the interest from industry. I can say one thing for sure: fishing organizations are very involved with the industry, right from policy to every aspect of conservation, protection, and everything you want to see. We want to be involved. We want our input considered.

It could be a minor change that has a big impact.

Mr. Larry Miller: Thank you.

Mr. Toner, or Mr. Marchi, what changes in the Fisheries Act do you think are detrimental to some of your proposed projects? Keep it as brief as you can, but give me an example.

● (1020)

Hon. Sergio Marchi: I would lean towards Terry, where the rubber hits the road in terms of regs on industry. However, for us, probably the singular one is lowering the threshold, as we both mentioned, to cover fish as opposed to a fish population, and microhabitat as opposed to general habitat.

We're one of the cleanest industries going. We're concerned about the fisheries, about the condition of water, but we also need to produce electricity for the benefit of Canadians and industry, so we're looking for a balanced, practical approach.

Terry, I don't know if you want to add to that.

Mr. Terry Toner: Sure.

I think the tone of most of our recommendations is in the direction of providing guidance. The wording that has been introduced can work, but I think we're looking for more clarity as to the kinds of considerations. I think population or ecosystem level is the area we're trying to focus on.

Mr. Larry Miller: Thank you.

Mr. Arnold.

The Chair: You have two minutes and fifty seconds.

Mr. Mel Arnold (North Okanagan—Shuswap, CPC): Thank you.

If you could, as soon as possible, provide us with a little more detail on what those recommendations might be, it would be very helpful as we move forward.

Mr. Marchi, you mentioned the cumulative effect of overlapping jurisdictional regulation and so on, and the problems that's creating. Do you see more of that with Bill C-68?

Hon. Sergio Marchi: In terms of the recommendations, I believe your deadline is May 10, so we will certainly be coming forward with specificity, as well as legal written amendments.

The cumulative impact is really becoming a concern, not only for our industry but for regulated industries in general. From the federal perspective, we have this fisheries bill, navigational waters, environmental assessment, the old NEB, climate change targets, clean fuel standards, coal-to-gas conversions, and clean air and clean water regulations, to name a few. Then you multiply that for every province and every territory.

The concern I tried to voice is that every level of government—and we don't object to being regulated—is responsible for their own layer. The question we ask is, which government is responsible and accountable for the entire overhang? We ultimately eat the cumulative pancakes and pay for it, and then pass it on to the end user: our customers and your voters.

Even though it's one of the most reliable, affordable electricity power in the world, we know how much electricity rates have become top of mind for many people across our country.

Ultimately, we need smart, good regulations, but regulations and legislation do have a cost. The cumulative impact is becoming dangerously heavy.

Mr. Mel Arnold: Thank you.

Ms. Fuller, we've had testimony presented about potential impacts of fisheries management decisions on depleted stocks and that the minister's opinion should be the base of some of those decisions. Do you think that the minister's opinion should be the case for making decisions or should it be science?

Ms. Susanna Fuller: I do think science should be the basis. I think in some cases the discretion is inherent in this act and this Bill C-68 has not gotten rid of discretion. I think it's important to have the factors to be considered absolutely include science, and I think that's a good addition because there's science but there's also precautionary approach, an ecosystem approach, and incorporation of indigenous knowledge.

The Chair: Thank you, Dr. Fuller.

I'm sorry, I feel I'm always cutting you off, but that's the time there.

We're now going to go to Mr. Donnelly for his seven minutes please.

Mr. Fin Donnelly: Thank you, Madam Chair, and thank you to all our witnesses for your testimony on Bill C-68.

Dr. Fuller, you mentioned six recommendations. I think you covered those quite well and you mentioned that you will submit that to this committee in writing.

Ms. Susanna Fuller: Yes, I will.

Mr. Fin Donnelly: Okay, that's very helpful.

Next, to Mr. MacPherson, you talked about the federal environmental review taking precedence over provincial reviews. Do you have wording as to how you think the act could cover that?

● (1025)

Mr. Ian MacPherson: It's been an interesting situation because they're federal waters, so we were surprised that in certain situations provincially it can take precedence over a federal EA in federal waters. That's part of what we're dealing with in the Abercrombie mill situation there.

Certainly the amount of time for input and the thoroughness are big concerns and that's why we are, as a collective group, lobbying to have a federal EA for this particular project.

Mr. Fin Donnelly: I know on our coast, we've had provincial EAs take precedence over federal as well.

Any kind of wording or suggestion specifically on how to improve that would be helpful.

Mr. Ian MacPherson: We could certainly provide that.

Mr. Fin Donnelly: Thank you very much.

I also wanted to ask our folks from the electricity association here about any specific wording around national standards for consultation with provincial partners, because I think that was mentioned. I think that's a tricky field. How do you provide a national standard and still reflect the provincial and territorial autonomy?

Mr. Terry Toner: We've done a lot of work with DFO over the last 12 years or more where we've had actually an MOU where we've worked collaboratively with them. I think we've recognized in that work that there is diversity across the country. There are different fish species. They have different priorities. There are different on-the-ground examples of things that happen.

Taking into account regional or provincial or territorial is important. We've started working with them on principles. When we start with principles, that's usually very helpful. Most people can agree on the principles. Then as we take it out into practices we measure those practices, whether they be the same across the country or not, against the principles to see that there's a consistency, not an identicalness, to it.

I think that's really important.

Mr. Fin Donnelly: If there's wording that you could provide the committee for Bill C-68, that would be really helpful.

Mr. Terry Toner: We will do that.

Mr. Fin Donnelly: That's the legislative part that we're looking at.

In terms of habitat banking, you mentioned there's some promise with this. I've also heard testimony that there's some nervousness about habitat banking if it allows the complete destruction of one watershed at the expense of putting enhancement into and maybe even over-enhancement into certain other watersheds.

How do you avoid that?

Mr. Terry Toner: I think the work on banking and on compensation, whether it's offsets or credits, is still an evolving area of development. In the last two or three years in particular, DFO has really worked on that.

What we do know is that projects require the ability to proceed. They can't completely avoid all areas of habitat, but we in our industry try very hard to avoid critical habitat, whether it's for species at risk or under the Fisheries Act. In those instances where there is habitat that is in play, the evolution of the work that's starting to happen—and, I think, is provided for in the legislation, and could be even better as we move forward—is the notion of identifying the critical nature of the habitat itself. If we're putting an alternate habitat in place, such as banking or whatever, there need to be—and we agree with this—significant and notable criteria to make sure that it actually is doing what it says it's going to do.

We believe that if we're able to do that, we should be able to move forward. This is an area that the department has been very careful about, and we respect that. I think we're simply looking to encourage rules that allow even more things to be accounted for as offsets because doing so encourages industries like ours that want things to do well and to sustain and to progress. It allows us a greater breadth of things that we could offer to do.

Mr. Fin Donnelly: Could you provide some wording on the criteria? That would be very helpful. Any submissions that this committee receives in terms of recommendations, amendments, and wording are critical.

Maybe in the remaining minute or two that I have, I'll give Mr. Marchi an opportunity to brag a little bit here about the association.

You mentioned how you've been able to reduce GHGs. Can you tell the committee how you've been able to do that?

● (1030)

Hon. Sergio Marchi: It has been a combination of things.

First of all, I think our country's decision to wean ourselves off coal is a significant variable in that. As you know, we're looking at stopping coal by 2030. I think, in some provinces, it will probably be 2040, with respect to some flexibility in those economic regions. I think getting off coal is important.

Second, simply, is innovation. We have a huge investment bill to renew our infrastructure. The Conference Board of Canada estimated some years ago that we have to spend in the order of $350 billion by 2030, but that's not just about replacing old with old. It's about replacing old with new and innovative. I think innovation has a lot to do with that. Our firms are investing roughly $20 billion annually on this innovation and infrastructure, and the outcomes are telling.

The Chair: You have thirty seconds.

Mr. Fin Donnelly: Dr. Fuller, I'll give you 30 seconds, since you've always been getting cut off, if you want to talk about the modernizing of the Fisheries Act and finish your thoughts on that.

You maybe got to 2000, but not to 2018.

Ms. Susanna Fuller: I think the examples that Joshua Laughren of Oceana gave are cases in point of where other countries and groups of countries have much better fisheries laws than we have. I think Bill C-68 goes a long way to getting there, but it's not quite there. I think two key areas, making sure that we are taking account for rebuilding and requiring it, and also making sure that we are managing cumulative effects properly, get to actually achieving the purpose of the act.

Law, as you know, is iterative, but I don't think right now that this Bill C-68 is quite in line with the UN fish stocks agreement or with the NAFO-amended convention, which are the two most recent pieces.

The Chair: Okay.

Ms. Susanna Fuller: So—

The Chair: I'm sorry, Dr. Fuller. I do have to cut you off again.

I want to take the opportunity right now to thank our guests for appearing today: Mr. Marchi, Mr. Toner, Mr. MacPherson, and Dr. Fuller by phone. We appreciate your testimony.

We're going to suspend for a few minutes, and then we'll come back in camera, please.

[*Proceedings continue in camera*]

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